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PUBLIC VERSION

August 28, 2017

VIA ECFS

Marlene Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: *AT&T Corp. v. Iowa Network Services, Inc.*
 FCC Docket No. 17-56
 Bureau ID No. EB-17-MD-001**

Dear Ms. Dortch:

On behalf of Iowa Network Services, Inc. d/b/a Aureon Network Services ("Aureon"), transmitted herewith is the Public version of Aureon's Reply Brief for filing in the above-referenced proceeding. On February 24, 2017, the FCC staff entered a Protective Order covering confidential materials submitted in this proceeding. Pursuant to the terms of the Protective Order, certain information has been designated by the parties as "Third Party Highly Confidential," "Highly Confidential," or "Confidential." As further detailed in the Protective Order, only four designated executives of Aureon and of AT&T are permitted to review Highly Confidential information. The public version of this submission redacts all confidential information as required by the Protective Order.

A Highly Confidential redacted version of this submission is being filed contemporaneously with the Secretary's Office. No Third Party Highly Confidential or Confidential version will be filed as this submission only contains Highly Confidential information.

Should there be any questions with respect to this matter, please feel free to contact the undersigned.

August 28, 2017

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Respectfully submitted,



James U. Troup

Tony S. Lee

*Counsel for Iowa Network Services, Inc.
d/b/a Aureon Network Services*

Enclosures

cc: Michael J. Hunseder, Counsel for AT&T
James F. Bendoragel, Jr, Counsel for AT&T
Lisa Griffin, FCC
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Adam Suppes, FCC
Sandra Gray-Fields, FCC
Christopher Killion, FCC

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
AT&T CORP.,)	
)	Docket No. 17-56
Complainant)	
)	Bureau ID No. EB-07-MD-001
vs.)	
)	
IOWA NETWORK SERVICES, INC., d/b/a)	
AUREON NETWORK SERVICES)	
)	
Defendant.)	

**REPLY BRIEF OF IOWA NETWORK SERVICES, INC.
d/b/a AUREON NETWORK SERVICES**

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August 28, 2017

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Exhibits

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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)	Docket No. 17-56
Complainant)	
)	Bureau ID No. EB-07-MD-001
vs.)	
)	
IOWA NETWORK SERVICES, INC., d/b/a)	
AUREON NETWORK SERVICES)	
)	
Defendant.)	

**REPLY BRIEF OF IOWA NETWORK SERVICES, INC.
d/b/a AUREON NETWORK SERVICES**

Iowa Network Services, Inc. d/b/a Aureon Network Services ("Aureon"), by its undersigned attorneys, and pursuant to the FCC's July 25, 2017 status conference letter ruling and August 14, 2017 Order issued in the above-captioned proceeding, files its Reply Brief.

I. AT&T Uses False Cost Allocation Assumptions to Contrive a Lower Rate in its CEA Rate Recalculations.

AT&T argues that Aureon over-allocated the cable and wire facilities ("CWF") fiber costs to the Access Division because [[BEGIN HIGHLY CONFIDENTIAL]]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹ [REDACTED]

[REDACTED]²

[REDACTED]

[REDACTED]³ [REDACTED]

[REDACTED]⁴ [REDACTED]

[REDACTED]⁵ [REDACTED]

[REDACTED]

[REDACTED]⁶ [REDACTED]

[REDACTED]

[REDACTED]⁷ [REDACTED]

[REDACTED]

[REDACTED]⁸

[REDACTED]

[REDACTED]⁹ [REDACTED]

[REDACTED]

¹ Second Supplemental Declaration of F. Hilton ¶ 2, attached hereto as Exhibit 77 (“F. Hilton Second Supp. Decl.”)

² *Id.*

³ *Id.* ¶ 3.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* ¶ 4.

[REDACTED]

[REDACTED]¹⁰

[REDACTED]

[REDACTED]¹¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹² [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[[END HIGHLY CONFIDENTIAL]]**

II. Aureon Conducted its Cost Studies in Accordance with the FCC's Rules, and Those Studies Show that Aureon Earned Less Than its Authorized Rate of Return.

AT&T avers that the IXC Division's lease rates used to allocate costs to the Access Division do not match the network cost revenue requirement in INS's tariff filings, and argues that

¹⁰ *Id.* ¶ 5.

¹¹ *Id.*

¹² *Id.* ¶ 2.

[[BEGIN HIGHLY CONFIDENTIAL]]

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¹³ AT&T Final Brief at 5-6.

¹⁴ [[BEGIN HIGHLY CONFIDENTIAL]]

[[END HIGHLY

CONFIDENTIAL]

¹⁵ Aureon only requested that Mr. Warinner [[BEGIN HIGHLY CONFIDENTIAL]]

[[END HIGHLY CONFIDENTIAL]]

¹⁶ Declaration of William Warinner ¶ 4, attached hereto as Exhibit 78.

¹⁷ *Id.*

[REDACTED]

[REDACTED]¹⁸ [REDACTED]

[REDACTED]¹⁹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²⁰ [REDACTED]

[REDACTED]²¹ [REDACTED]

[REDACTED]²²

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²³ [REDACTED]

[REDACTED]²⁴ [REDACTED]

[REDACTED]²⁵ [REDACTED]

[REDACTED]

[REDACTED]

¹⁸ *Id.* ¶¶ 6-7.

¹⁹ *Id.* ¶ 7.

²⁰ *Id.* ¶¶ 7-12.

²¹ *Id.* ¶ 12.

²² *Id.*

²³ Aureon Legal Analysis at 47 (*citing AT&T Corp. v. Alpine Commc'ns, LLC*, Memorandum Opinion and Order, 27 FCC Rcd. 11511 (2012)).

²⁴ F. Hilton Second Supp. Decl. ¶ 8.

²⁵ *Id.*

²⁶ W. Warriner Decl. ¶ 13.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²⁷ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²⁸

[REDACTED]

[REDACTED]²⁹ [REDACTED]

[REDACTED]

[REDACTED]³⁰ [REDACTED]

[REDACTED] [[END HIGHLY
CONFIDENTIAL]]

III. Aureon's Volume Discount Plan Properly Offered a Reduced CEA Rate to IXC's Agreeing to Minimum Traffic Volume Requirements.

AT&T argues that Aureon's proposed and withdrawn contract tariff applicable to calls directed to eight specified OCNs shows that Aureon's tariffed CEA rate should be lower. The proposed contract tariff terms never went into effect, and the FCC required Aureon to implement a volume discount plan applicable to all CEA traffic, regardless of the destination, for carriers

²⁷ *Id.*

²⁸ *Id.*

²⁹ Aureon Legal Analysis, pp. 38-41.

³⁰ W. Warinner Decl. ¶ 15.

meeting minimum monthly traffic volume requirements. AT&T misunderstands that [[BEGIN
HIGHLY CONFIDENTIAL]] [REDACTED]

[REDACTED]³¹ [REDACTED]

[REDACTED]³² [REDACTED]³³

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [[END HIGHLY CONFIDENTIAL]] The

Commission required similar cost support when it reviewed AT&T's contract tariffs.³⁴ It is important to note that the cost support materials filed in support of the proposed contract tariff did not include uncollectible amounts. Inteliquent was a new CEA customer that was not responsible for the uncollectible amounts, and the prior uncollectible amounts caused by other IXC's, such as AT&T, had already been factored into the tariffed CEA rate. This necessarily resulted in a lower rate for the tariffed volume discount plan than for regular CEA service.

IV. In Order to Reduce Access Stimulation, the FCC Should Enforce its CEA Mandatory Use Policy and Require IXCs to Route all Traffic to Subtending LECs Over the CEA Network.

AT&T avers that bypass of Aureon's network is occurring "on an enormous scale." Aureon only recently learned of this bypass through publicly available documents in litigation, and the FCC has only become aware of the scope of the bypass problem through this case. [[BEGIN

³¹ F. Hilton Supp. Decl. ¶ 9.

³² *Id.*

³³ *Id.*

³⁴ *In re AT&T Communications Revisions to Tariff F.C.C. No. 12*, Memorandum Opinion and Order, 4 FCC Rcd. 811, 813 (1988) (referencing "fully distributed cost information showing a net profit in a representative year").

HIGHLY CONFIDENTIAL]] [REDACTED]

[REDACTED]³⁵ [REDACTED]

[REDACTED]³⁶ [REDACTED]

[REDACTED]³⁷

[REDACTED]³⁸ [REDACTED]

[REDACTED] [[END HIGHLY CONFIDENTIAL]]

Allowing AT&T to remove its traffic from the CEA network would be a change in the Commission's CEA mandatory use policy that would be detrimental to the public interest. Removing such a large percentage of total CEA traffic from the CEA network would cause a significant increase in the CEA tariff rate for AT&T's competitors; forcing them to abandon rural areas, reducing IXC rural competition and consumer choice, and undermining the future economic viability of the CEA network. Bypass is not the solution, but the cornerstone of access stimulation. The solution to reducing access stimulation is to enforce the CEA mandatory use policy. As

³⁵ F. Hilton Second Supp. Decl. ¶ 2.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *See* Aureon Exhibit 79.


terminating end office local switching rates have gone to zero, access stimulators have come to depend upon access transport revenue as the only source for access revenue sharing. Conferencing companies, such as Free Conferencing Corporation, have established access transport stimulators, such as HD Tandem, that engage in access transport revenue sharing.³⁹ See *Inteliquent, Inc. v. Free Conferencing Corp.*, Case No. 16-cv-06976, 2017 W.L. 1196957 *4 (N.D. Ill. 2017).

Enforcing the Commission's CEA mandatory use policy will help eliminate access transport revenue sharing in Iowa, as IXCs route traffic over the CEA network instead of the facilities of access transport stimulators, like HD Tandem. Because Section 61.38 causes Aureon's CEA tariff rate to decrease with increases in traffic volume, there is no ability for Aureon to engage in access transport revenue sharing. LECs have a choice whether to connect to the CEA network, but once they make the decision to become CEA subtending LECs, IXCs should route traffic to those LECs' end offices over the CEA network and not over facilities set up to engage in access transport stimulation.

V. Conclusion

WHEREFORE, for the foregoing reasons, in ruling upon this primary jurisdiction referral, Aureon respectfully requests that the Commission advise the U.S. District Court as requested in Aureon's Answer and Initial Brief, and deny AT&T's Formal Complaint.

Respectfully submitted,


James U. Troup
Tony S. Lee
Keenan P. Adamchak
Fletcher, Heald & Hildreth, PLC

³⁹ The term "access transport stimulator" refers to an intermediate carrier that is formed for the sole purpose of sharing revenue from transporting access stimulation traffic with conferencing companies and the LECs that terminate that traffic.

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Dated: August 28, 2017

PUBLIC VERSION

CERTIFICATE OF SERVICE

I, Monica Gibson-Moore, do hereby certify that on this 28th day of August, 2017, copies of the foregoing Reply Brief of Iowa Network Services, Inc. d/b/a Aureon Network Services were sent to the following:

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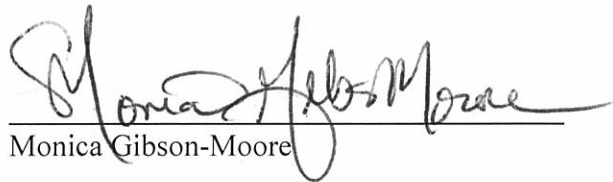

Monica Gibson-Moore

Table of Exhibits

<u>Ex.</u>	<u>Title</u>
77	Second Supplemental Declaration of Frank Hilton
78	Declaration of William Warinner
79	Aureon Letter
80	Fiber Cable Rent Forecast 2014-2015
81	Excerpts from Deposition of Jeff Schill

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EXHIBIT 77

SECOND SUPPLEMENTAL DECLARATION OF FRANK HILTON

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MATERIALS OMITTED**

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EXHIBIT 78

DECLARATION OF WILLIAM WARINNER

**HIGHLY CONFIDENTIAL
MATERIALS OMITTED**

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EXHIBIT 79

AUREON LETTER

**HIGHLY CONFIDENTIAL
MATERIALS OMITTED**

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EXHIBIT 80

FIBER CABLE RENT FORECAST 2014-2015

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MATERIALS OMITTED**

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EXHIBIT 81

EXCERPTS FROM DEPOSITION OF JEFF SCHILL

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